

1  
2  
3  
4  
5  
6  
7 **BEFORE THE**  
8 **CALIFORNIA BOARD OF ACCOUNTANCY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2012-16

12 **RANDOLPH H. SPEER**  
13 **Register No. 58157-019**  
14 **Federal Prison Camp - Atlanta**  
15 **U.S. Penitentiary**  
16 **P.O. Box 150160**  
17 **Atlanta, GA 30315**

OAH No. 2012100564

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

18 **and**

19 **P.O. Box 142433**  
20 **Fayetteville, GA 30214**

21 **Certified Public Accountant Certificate**  
22 **No. 26375**

23 Respondent.

24 **FINDINGS OF FACT**

25 1. On or about January 11, 2012, Complainant Patti Bowers, in her official capacity as  
26 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs,  
27 filed Accusation No. AC-2012-16 against Randolph H. Speer (Respondent) before the California  
28 Board of Accountancy. (Accusation attached as Exhibit A.)

2. On or about June 16, 1978, the California Board of Accountancy (CBA) issued  
Certified Public Accountant Certificate No. 26375 to Respondent. The Certified Public  
Accountant Certificate expired on September 1, 2008, and has not been renewed. It is currently

1 in a delinquent status. The CBA has jurisdiction to adjudicate this case per Business and  
2 Professions Code (B & P Code) section 5109.

3 3. On or about January 24, 2012, Respondent was served by Certified and First Class  
4 Mail copies of the Accusation No. AC-2012-16, Statement to Respondent, Notice of Defense,  
5 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
6 and 11507.7) at Respondent's address of record which, pursuant to California Code of  
7 Regulations, title 16, section 3, is required to be reported and maintained with the CBA.  
8 Respondent's address of record was and is: P.O. Box 142433, Fayetteville, GA 30214.

9 4. On or about January 24, 2012, Respondent was also served by Certified and First  
10 Class Mail copies of the Accusation No. AC-2012-16, Statement to Respondent, Notice of  
11 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,  
12 11507.6, and 11507.7) at Respondent's current address, which is, Register No. 58157-019  
13 Federal Prison Camp – Atlanta, U.S. Penitentiary, P.O. Box 150160, Atlanta, GA 30315.

14 5. Service of the Accusation was effective as a matter of law under the provisions of  
15 Government Code section 11505, subdivision (c) and/or B & P Code section 124.

16 6. On or about February 2, 2012, Respondent signed and returned a Notice of Defense,  
17 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's  
18 address of record and his current address in the Federal Prison Camp, and it informed him that an  
19 administrative hearing in this matter was scheduled for January 23, 2013. Respondent failed to  
20 appear at that hearing.

21 7. Government Code section 11506 states, in pertinent part:

22 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
23 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
24 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

25 8. California Government Code section 11520 states, in pertinent part:

26 (a) If the respondent either fails to file a notice of defense or to appear at the  
27 hearing, the agency may take action based upon the respondent's express admissions  
28 or upon other evidence and affidavits may be used as evidence without any notice to  
respondent.

9. Pursuant to its authority under Government Code section 11520, the CBA finds Respondent is in default. The CBA will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the CBA's offices regarding the allegations contained in Accusation No. AC-2012-16, finds that the charges and allegations in Accusation No. AC-2012-16, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to B & P Code section 5107, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$14,260.94 as of February 13, 2013.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Randolph H. Speer has subjected his Certified Public Accountant Certificate No. 26375 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The California Board of Accountancy is authorized to revoke Respondent's Certified Public Accountant Certificate based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Violations of Business and Professions Code section 5100 (a) and section 490 for convictions of various crimes substantially related to the qualifications, functions and duties of a licensee.

b. Violation of Business and Professions Code section 5100 (h) for unprofessional conduct in that his right to practice before any governmental body or agency was suspended or revoked.

c. Violation of Business and Professions Code section 5100 (l) for unprofessional conduct in that he was sanctioned and disciplined by the Securities and Exchange Commission. (SEC)

///

1 d. Violations of Business and Professions Code section 5063(a)(1)(A-B) and section  
2 5063(b)(3) in that he failed to report his criminal conviction and his discipline by the SEC, to the  
3 CBA.,  
4

5 **ORDER**

6 IT IS SO ORDERED that Certified Public Accountant Certificate No. 26375, heretofore  
7 issued to Respondent Randolph H. Speer, is revoked.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
9 written motion requesting that the Decision be vacated and stating the grounds relied on within  
10 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
11 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

12 This Decision shall become effective on APRIL 28, 2013.

13 It is so ORDERED MARCH 29, 2013  
14

15 Leslie J. LaManna  
16 FOR THE CALIFORNIA BOARD OF  
17 ACCOUNTANCY  
18 DEPARTMENT OF CONSUMER AFFAIRS

19 70678550.DOC  
20 DOJ Matter ID:SD2011801361

21 Attachment:  
22 Exhibit A: Accusation  
23  
24  
25  
26  
27  
28

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 DAVID E. HAUSFELD  
Deputy Attorney General  
4 State Bar No. 110639  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2025  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2012-16

12 **RANDOLPH H. SPEER**  
13 **P.O. Box 142433**  
14 **Fayetteville, GA 30214**

**A C C U S A T I O N**

15 **Certified Public Accountant Certificate**  
16 **No. 26375**

Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as  
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.  
22 2. On or about June 16, 1978, the California Board of Accountancy issued Certified  
23 Public Accountant Certificate Number 26375 to Randolph H. Speer (Respondent). The Certified  
24 Public Accountant Certificate expired on September 1, 2008, and has not been renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the California Board of Accountancy (CBA),  
27 Department of Consumer Affairs, under the authority of the following laws. All section  
28 references are to the Business and Professions Code unless otherwise indicated.

1           4.     Section 490 of the Code provides, in pertinent part, that a board may suspend or  
2     revoke a license on the ground that the licensee has been convicted of a crime substantially  
3     related to the qualifications, functions, or duties of the business or profession for which the  
4     license was issued.

5           5.     Section 493 of the Code states:

6                 Notwithstanding any other provision of law, in a proceeding conducted by a board  
7                 within the department pursuant to law to deny an application for a license or to  
8                 suspend or revoke a license or otherwise take disciplinary action against a person  
9                 who holds a license, upon the ground that the applicant or the licensee has been  
10                convicted of a crime substantially related to the qualifications, functions, and  
11                duties of the licensee in question, the record of conviction of the crime shall be  
                conclusive evidence of the fact that the conviction occurred, but only of that fact,  
                and the board may inquire into the circumstances surrounding the commission of  
                the crime in order to fix the degree of discipline or to determine if the conviction is  
                substantially related to the qualifications, functions, and duties of the licensee in  
                question.

12                As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
                'registration.'

13           6.     Section 5109 of the Code provides that the expiration, cancellation, forfeiture or  
14     suspension of a license shall not deprive the CBA of jurisdiction to proceed with any  
15     investigation of or action or disciplinary action against the licensee, or to render a decision  
16     suspending or revoking a license.

### 17                                 STATUTORY PROVISIONS

18           7.     Section 5063, subdivision (a), states, in pertinent part:

19                 (a) A licensee shall report to the board in writing of the occurrence of any of  
20                 the following events . . . within 30 days of the date the licensee has knowledge of  
                these events:

21                         (1) The conviction of the licensee of any of the following:

22                                 (A) A felony.

23                                 (B) Any crime related to the qualifications, functions, or duties of a public  
24                                 accountant or certified public accountant, or to acts or activities in the course and  
                                scope of the practice of public accountancy.

25                                 (C) Any crime involving theft, embezzlement, misappropriation of funds or  
26                                 property, breach of a fiduciary responsibility, or the preparation, publication, or  
27                                 dissemination of false, fraudulent, or materially misleading financial statements,  
                                reports, or information.

28                         As used in this section, a conviction includes the initial plea, verdict, or  
                                finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court  
                                even though that conviction may not be final or sentence actually imposed until  
                                appeals are exhausted.

1 (b) A licensee shall report to the board in writing of the occurrence of any of  
2 the following events . . . within 30 days of the date the licensee has knowledge of  
3 these events:

4 . . . .

5 "(3) Any notice of the opening or initiation of a formal investigation of the  
6 licensee by the Securities and Exchange Commission or its designee."

7 . . . .

8 8. Section 5100 states, in pertinent part:

9 After notice and hearing the board may revoke, suspend, or refuse to renew  
10 any permit or certificate granted under Article 4 (commencing with Section 5070)  
11 and Article 5 (commencing with Section 5080), or may censure the holder of that  
12 permit or certificate for unprofessional conduct that includes, but is not limited to,  
13 one or any combination of the following causes:

14 (a) Conviction of any crime substantially related to the qualifications,  
15 functions and duties of a certified public accountant or a public accountant.

16 . . . .

17 (h) Suspension or revocation of the right to practice before any  
18 governmental body or agency.

19 . . . .

20 (l) The imposition of any discipline, penalty, or sanction on a registered  
21 public accounting firm or any associated person of such firm, or both, or on any  
22 other holder of a permit, certificate, license, or other authority to practice in this  
23 state, by the Public Company Accounting Oversight Board or the United States  
24 Securities and Exchange Commission, or their designees under the  
25 Sarbanes-Oxley Act of 2002 or other federal legislation.

26 . . . .

27 9. Section 5106 states:

28 A plea or verdict of guilty or a conviction following a plea of nolo  
contendere is deemed to be a conviction within the meaning of this article. The  
record of the conviction shall be conclusive evidence thereof. The board may  
order the certificate or permit suspended or revoked, or may decline to issue a  
certificate or permit, when the time for appeal has elapsed, or the judgment of  
conviction has been affirmed on appeal or when an order granting probation is  
made, suspending the imposition of sentence, irrespective of a subsequent order  
under the provisions of Section 1203.4 of the Penal Code allowing such person to  
withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the  
verdict of guilty or dismissing the accusation, information or indictment.

///

## REGULATORY PROVISIONS

10. Title 16 of the California Code of Regulations, section 99, states, in pertinent part:

For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his or her certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

....

(d) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board.

## COST RECOVERY

11. Section 5107(a) of the Code states:

"The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

## FACTS

12. On August 30, 2010, the CBA received a suspension notification from the Securities and Exchange Commission (SEC) regarding Respondent and others. The SEC alleged that Respondent violated antifraud provisions of securities laws and various other disclosure agreements while employed as the Chief Financial Officer (CFO) for National Century Financial Enterprises, Inc., (NCFE). Respondent served as the CFO and Executive Vice-President of Finance from 1999 to 2002, and served as Executive Vice President of NCFE's special purpose subsidiaries, NPF VI, Inc. and NPF XII, Inc.

13. On or about December 21, 2005, the SEC filed a civil action against Respondent in *SEC v. Randolph H. Speer, et al.*, Civil Action File No. 2:05CV1142. The Commission's



1 complaint alleges that NCFE, through its' subsidiaries, purchased medical accounts receivables  
2 and issued notes that securitized those receivables. The subsidiaries were required to maintain  
3 certain cash reserves and receivables as collateral for the notes. Nevertheless, NCFE officials  
4 (which included Respondent) depleted the reserve accounts and collateral base by "advancing" at  
5 least \$1.2 billion to health-care providers, some of which were wholly or partly owned by NCFE  
6 or its' principles, without receiving eligible receivables in return. The Complaint alleges NCFE  
7 officials misrepresented the status of the program's reserve accounts and collateral base to  
8 investors and concealed the reserve account and collateral shortfalls by creating or allowing the  
9 creation of false offering documents, monthly investor reports, and accounting records. NCFE  
10 collapsed suddenly in October 2002 upon revelation of the fraud. The collapse caused investor  
11 losses exceeding \$2.38 billion and approximately 275 health-care providers were forced to file for  
12 bankruptcy protection.

13 14. On January 8, 2010, as a result of the SEC investigation and subsequent civil  
14 proceedings, the United States District Court, Southern District of Ohio, Eastern Division, entered  
15 an order permanently enjoining Respondent from future violations of the antifraud provisions of  
16 Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act of 1934 and  
17 Rule 10b-5 thereunder, and prohibited him from acting as an officer or director of a public  
18 company. Without admitting or denying the allegations in the complaint, Mr. Speer consented to  
19 the entry of Final Judgment in the SEC's civil suit.

20 15. In addition to the SEC civil action, a criminal action was filed against Respondent for  
21 his actions as CFO of NCFE. On or about October 10, 2008, in the United States District Court,  
22 Southern District of Ohio, an Amended Judgment in Criminal Case No. CR-2-06-129(4), was  
23 entered in the case of *United States of America v. Randolph H. Speer*. Respondent was found  
24 guilty on eleven counts, including the following; conspiracy (Count 1), securities fraud (Counts 4-  
25 6), wire fraud (Count 12), conspiracy to commit money laundering (Count 17), and money  
26 laundering (Counts 18-22).

27 16. Respondent was sentenced to imprisonment with the United States Bureau of Prisons  
28 for a term of sixty (60) months on each of counts one (1), four (4), five (5), six (6), and twelve

(12) to run concurrently, and one hundred forty-four (144) months on counts seventeen (17) through twenty-two (22) to run concurrently with counts one, four, five, six, and 12. Mr. Speer was also ordered to pay restitution in the amount of \$2,384,147,105.09. This amount is to be paid jointly with other co-defendants in the case. Upon release from imprisonment, Respondent shall be on supervised release for a term of three (3) years to run concurrently.

#### **FIRST CAUSE FOR DISCIPLINE**

##### **(Criminal Convictions)**

17. Respondent has subjected his license to disciplinary action for unprofessional conduct under Code sections 5100(a) and 490 in that he was convicted of the following crimes; conspiracy, securities fraud, wire fraud, conspiracy to money launder and money laundering. These crimes are substantially related to the qualifications, functions or duties of a licensee, as more particularly described in paragraphs 12 through 16, above.

#### **SECOND CAUSE FOR DISCIPLINE**

##### **(Suspension or Revocation to Practice before any Governmental Body or Agency)**

18. Respondent has subjected his license to disciplinary action for unprofessional conduct under Code sections 5100(h) in that his right to practice before any governmental body or agency was suspended or revoked, as more particularly described in paragraphs 12 through 16, above.

#### **THIRD CAUSE FOR DISCIPLINE**

##### **(Sanctions or Discipline by the Securities and Exchange Commission)**

19. Respondent has subjected his license to disciplinary action for unprofessional conduct under Code sections 5100(l) in that he was sanctioned and disciplined by the SEC, as more particularly described in paragraphs 12 through 16, above.

#### **FOURTH CAUSE FOR DISCIPLINE**

##### **(Failure to Notify the Board of a Reportable Event)**


20. Respondent is subject to discipline under section 5063(a)(1)(A-B) and section 5063(b)(3) of the Code in that he failed to report his criminal conviction and his discipline by the SEC, to the CBA, as more particularly described in paragraphs 12 through 16, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 26375, issued to Randolph H. Speer;
2. Ordering Randolph H. Speer to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;
3. Taking such other and further action as deemed necessary and proper.

DATED: 1-11-2012



PATTI BOWERS  
Executive Officer  
California Board of Accountancy  
Department of Consumer Affairs  
State of California  
*Complainant*

SD2011801361  
80587319.doc